

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs at Jackson December 4, 2007

KIMBERLY RUTH BROWN v. STATE OF TENNESSEE

Appeal from the Circuit Court for Bedford County
No. 10984 Robert Crigler, Judge

No. M2007-00128-CCA-R3-PC - Filed April 2, 2008

The petitioner, Kimberly Ruth Brown, appeals from the Bedford County Circuit Court's dismissal of her petition for post-conviction relief from felony drug convictions and an effective sentence of eighteen years. The petitioner argues on appeal that the trial court erred in dismissing her petition as untimely because due process requires consideration of the petition notwithstanding the fact it was filed almost seventeen months after her judgment of conviction was final. Because the trial court properly dismissed the claim, we affirm its judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which DAVID G. HAYES and ROBERT W. WEDEMEYER, JJ., joined.

Donna Orr Hargrove, District Public Defender, and Andrew Jackson Dearing, III, Assistant Public Defender, for the appellant, Kimberly Ruth Brown.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; Charles Frank Crawford, Jr., District Attorney General; and Michael David Randles and Ann L. Filer, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

According to the post-conviction petition, the petitioner pled guilty to "3 counts of Selling Schedule II Drugs and 1 count of possession of Schedule II Drugs for resale" and the judgments were entered on April 18, 2005. The petitioner filed a motion for modification or reduction of sentence in the trial court. The trial court denied the motion on September 14, 2005. The petitioner then filed a motion for modification or reduction of sentence with this court on June 21, 2006. This court dismissed the motion based upon lack of original jurisdiction on July 19, 2006. See Kimberly Brown v. State, No. M2006-01293-CCA-OT-CD, Davidson County (Tenn. Crim. App. July 19, 2006) (order). On September 12, 2006, the petitioner filed a pro se petition for post-conviction relief

in which she alleged she had received the ineffective assistance of trial counsel. The trial court appointed counsel and conducted a hearing.

At the hearing, the only issue which was litigated was whether the petition should be dismissed as untimely. The petitioner testified at the hearing that based upon the advice of prison law clerks, she believed that she had one year from the trial court's September 14, 2005 denial of her motion for modification or reduction of sentence to file a post-conviction petition. The trial court found that the petitioner's post-conviction statute of limitations ran on April 18, 2006, and that her petition filed in September 2006 was untimely.

The petitioner argues on appeal that due process requires tolling of the statute of limitations. The state argues that it does not, with which we agree.

The Tennessee Post-Conviction Procedure Act specifies that

a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of such petition shall be barred. The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity.

T.C.A. § 40-30-102(a). If a petitioner files a petition for post-conviction relief outside the one-year statute of limitations, a court may still consider the petition if (1) a new constitutional right has been recognized; (2) the petitioner's innocence has been established by new scientific evidence; or (3) a previous conviction that enhanced the petitioner's sentence has been held to be invalid. T.C.A. § 40-30-102(b).

A court may also consider an untimely petition for post-conviction relief if applying the statute of limitations would deny the petitioner due process. Burford v. State, 845 S.W.2d 204, 209-10 (Tenn. 1992). Due process requires that a petitioner be afforded the opportunity to present her claim "at a meaningful time and in a meaningful manner." Id. at 208 (citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 437, 102 S. Ct. 1148, 1158-59 (1982)).

Upon consideration, we conclude that the petitioner's claim does not fall under any of the statutory exceptions to the one-year statute of limitations and that due process does not require that the statute of limitations be tolled in this case. It is well established that the statute of limitations is not tolled on due process grounds because a petitioner was ignorant of the limitations period or received erroneous advice about the time for filing a post-conviction claim. See, e.g., State v. Phillips, 904 S.W.2d 123, 124 (Tenn. Crim. App. 1995); Brown v. State, 928 S.W.2d 453, 456 (Tenn. Crim. App. 1996). Thus, the trial court did not err in dismissing the petition as untimely.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

JOSEPH M. TIPTON, PRESIDING JUDGE